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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Alla Josephine Rosenfield

Plaintiff,

VS.

GlobalTranz Enterprises, Inc., a Delaware corporation; Andrew J. Leto, an Arizona citizen and a married man; Jane Doe Leto, an Arizona citizen and a married woman; Anthony Albanese, a Florida citizen and a married man; Jane Doe Albanese, a Florida citizen and a married woman; John Does I-X; Jane Does I-X; ABC corporations I-X; Def Limited Liabilities Company I-X; and XYZ Partnerships or LLP, I-X.

### Defendants.

No. CV 11-02327-PHX-NVV

## ORDER

Before the Court is Defendants' Motion to Strike (Doc. 4). Defendants request that the Court strike paragraphs 44, 46, 47 and 48 of Plaintiff's Complaint (Doc. 1-1) because these paragraphs include improperly disclosed attorney-client privileged materials. Defendants also request that the Court authorize the filing of a similar motion in state court, where this case originated, in order to request that the privileged materials be stricken from the complaint on record there. Because Plaintiff restated the privileged materials in her response to Defendants' motion, Defendants also request that the privileged materials disclosed in Plaintiff's response be stricken.

1           The attorney-client privilege “protects confidential communications between  
2 attorneys and clients[] which are made for the purpose of giving legal advice.” *United*  
3 *States v. Richey*, 632 F.3d 559, 566 (9th Cir. 2011) (citing *Upjohn Co. v. United States*,  
4 449 U.S. 383, 389 (1981)). The privilege applies to “legal advice of any kind . . . from a  
5 professional legal adviser in his capacity as such” where “the communications relat[e] to  
6 that purpose . . . [and are] made in confidence . . . by the client.” *United States v. Graf*,  
7 610 F.3d 1148, 1156 (9th Cir. 2010) (quoting *United States v. Ruehle*, 583 F.3d 600, 607  
8 (9th Cir. 2009)). Such privileged materials are “permanently protected . . . from  
9 disclosure by [the client] or the legal adviser . . . unless the protection be waived.” *Id.*  
10 The party asserting the attorney-client privilege has the burden of establishing all the  
11 elements of the privilege. *See Richey*, 632 F.3d at 566. Both the substance of  
12 communications between client and attorney regarding the provision of legal assistance  
13 as well as the purpose and motivation for seeking legal advice are privileged. *See In re*  
14 *Grand Jury Witness*, 695 F.2d 359 (9th Cir. 1982) (“As a general proposition, the client’s  
15 ultimate motive for litigation or for retention of an attorney is privileged.”).

16           Defendants have satisfied their burden of establishing that paragraphs 44, 46, 47,  
17 and 48 of Plaintiff’s complaint contain attorney-client privileged materials. Plaintiff has  
18 not challenged whether the attorney client-relationship exists here or whether the  
19 privilege has otherwise been waived. Rather, Plaintiff simply alleges that the disclosed  
20 information does not contain “confidential disclosures that rise[] to the level of attorney-  
21 client privileged information” (Doc. 8 at 2) and is otherwise by its nature not properly  
22 characterized as privileged. However, these paragraphs relate both Defendants’ motive  
23 for seeking legal advice as well as the substance of Defendants’ attorney’s  
24 communications in response to the inquiry for legal advice, and thus fall plainly within  
25 the protection of the attorney-client privilege.<sup>1</sup> This privileged material is therefore  
26 inadmissible, and may accordingly be stricken as immaterial under Rule 12(f). *See Fed.*

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27           <sup>1</sup> In order to avoid further disclosure of Defendants’ privileged information, the  
28 Court will not discuss specifically the allegations contained in paragraphs 44, 46, 47, and  
48.

1 R. Civ. P. 12(f) (authorizing Court to strike from pleading all allegations that are  
2 "immaterial, impertinent or scandalous.").

3 Because the Court agrees that paragraphs 44, 46, 47, and 48 contain information  
4 protected by the attorney-client privilege, the Court will grant Defendants' Motion to  
5 Strike (Doc. 4) and related requests to strike the privileged material from Plaintiff's  
6 response (Doc. 8) and from the state court record. The parties shall re-file redacted  
7 versions of Documents 1 and 8 omitting the privileged materials.

8 IT IS THEREFORE ORDERED that Defendants' Motion to Strike (Doc. 4) is  
9 granted. The Clerk shall strike from the record the documents containing privileged  
10 materials (Docs. 1, 8).

11 IT IS FURTHER ORDERED that the parties shall file replacement documents  
12 omitting the privileged materials as provided by this order for Documents 1 and 8.

13 IT IS FURTHER ORDERED granting jurisdiction to Maricopa County Superior  
14 Court for the limited purpose of striking paragraphs 44, 46, 47, and 48 from the  
15 Complaint in this matter that remains on file in the Superior Court's public record. The  
16 Court requests that the Superior Court strike paragraphs 44, 46, 47, and 48 from the  
17 Complaint to provide the relief granted by this order.

18 Dated this 27th day of January, 2012.

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21 Neil V. Wake  
22 United States District Judge  
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